IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.2.2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

APPEAL SUIT NO.565 OF 1994.

M.Manicka Naicker ... Appellant

Vs.

Vadivelu Naicker ... Respondent

Appeal against the judgment and decree dated 20.3.1992 made in O.S. No.33 of 1986 by the Court of the Subordinate Judge, Kancheepuram.

! For appellant : Mr.S.D.N.Vimalanathan
^ For respondent : Mr.S.K.Ravi

: JUDGMENT

The above appeal suit is directed against the judgment and decree dated 20.3.1992 rendered in O.S.No.33 of 1986 by the Court of Subordinate Judge, Kancheepuram.

2. Tracing the history of the case, it comes to be known that the respondent herein had filed the suit in O.S.No.33 of 1986 before the Court below against the appellant herein for specific performance of the sale agreement dated 5.2.1983 receiving the balance sale consideration of Rs.7,500/= and for costs on averments such as that the defendant agreeing to sell the suit lands,measuring 3.08 acres situated in Kooram village of Kancheepuram Taluk, for a sum of Rs.27,500/= had executed the registered agreement of sale dated 5.2.1983 and also received a sum of Rs.20,000/= as advance further agreeing to receive the balance of sale consideration of Rs.7,500/= from the plaintiff and execute the register sale deed; that the time fixed was till 5.2.1987; that since even though the plaintiff was ready and willing to perform his part of contract by paying the balance of sale consideration of Rs.7,500/=, even before the time fixed, the defendant gave evasive replies, the plaintiff issued a notice dated 21.12.1984 calling upon the plaintiff to execute the sale deed after receiving the balance sale consideration; that the defendant has given a reply notice with untenable grounds and the plaintiff has sent a rejoinder on 30.1.1985. The plaintiff would further submit that the allegation of the defendant in the reply notice that the plaintiff has executed a `edhiradai cheetu' is false and if at all any such document is there, it must be a concocted

one. On such averments, the plaintiff would pray for the relief, extracted supra.

3. In the written statement filed by the defendant, besides generally denying the allegations of the plaint, he would also submit that he has approached the plaintiff for a loan of Rs.20,000/= and agreeing to advance the same, since the stamp and registration expenses for execution and registration of the mortgage deed will be more, the plaintiff suggested that the defendant can execute and register an agreement of sale fixing the time to 5.2.1987 by which time the defendant should return the principal and interest at 24%; that on the same day, to evidence the defendants agreement, the plaintiff has executed one `edhiridai cheettu' i.e. an agreement.

4. The defendant would further submit that the amount was borrowed by the defendant for discharging a pronote dated 2.8.1979 executed by him in favour of the plaintiff for Rs.6,000/= towards the principal and Rs.4,000/= towards the interest, thus, a sum of Rs.10,000/= was adjusted by the plaintiff towards his dues and for the remaining sum of Rs.10,000/=, at the time of agreement, the plaintiff paid only Rs.5,000/= and agreed to pay the balance of Rs.5,000/= at his house later; that immediately thereafter the plaintiff met with a jeep accident and was bedridden; that the plaintiff was all along promising to pay the said sum of Rs.5,000/= to the defendant;that the scribe and witness to the `edhiridai cheettu' are the same persons as in the suit agreement dated 5.2.1983; that even in the panchayat consisting of Ponnappa Naicker son of Manickka Naicker, Andi Munuswamy Naicker and Veeraswamy Naicker of Koothirambakkam village and others, the plaintiff has agreed about this and has agreed to receive the principal sum of Rs.15,000/= and interest thereon and cancel the alleged sale agreement, but contrary to the same, he has filed this suit, suppressing the real agreement between the parties and the `edhiridai cheettu' by him; that since there was never any sale agreement, the defendant has spent a huge sum and has dug a well in S.No.135/1 and has installed an oil engine and put up a brick kiln to the knowledge of the plaintiff and the defendant has also sold 0.50 acre in S.No.400 to third parties and the plaintiff also has never raised any objection for the same; that as per the agreement between the parties, the defendant is making arrangement to pay the sum of Rs.15,000/= with interest to the plaintiff on or before 5.2.1987 and hence the plaintiff is bound only to receive this sum and cancel the agreement of sale and would pray to dismiss the suit with exemplary costs.

5. Based on the above pleadings by parties, the Court below would frame the following issues:

1.Whether the defendant is liable to execute the sale agreement as prayed for by the plaintiff?

2.Whether the sale agreement is to sell the suit properties?

3.Whether the suit is liable to be dismissed with exemplary costs?

4.What relief, if any, the plaintiff is entitled to?
Framing the above issues, the Court below would conduct a trial, wherein the plaintiff would examine himself as P.W.1 for oral evidence and would mark four documents as Exs.A.1 to A.4. Likewise, on behalf of the defendant, though the defendant got himself examined as D.W.1 for oral evidence, no documents would be marked for documentary evidence.

6. Thereafter, observing that the plaintiff has agreed in his evidence that if the defendant paid him the sum of Rs.67,000/= in two installments, he has no objection for the suit being dismissed, for which the defendant had also agreed, the Court below would direct the defendant to pay a sum of Rs.67,000/= in two installments i.e. on or before 12.5.1992 a sum of Rs.35,000/= and Rs.32,000/= on or before 12.7.1992, in which event, the suit would stand dismissed. It is only aggrieved against the said judgment and decree of the Court below, the defendant has come forward to prefer the above appeal suit on grounds such as (i) that the Court below has not rendered any finding in any of the issues; (ii) that the Court below failed to note that there was no compromise; (iii) that the Court below has failed to note that since the defendant/appellant is ignorant and illiterate on account of fraud, undue influence and coercion, certain irrelevant evidences have been taken and the learned Judge ought to have ignored the same and the learned trial Judge while dealing with the matter on merits, ought not to have given importance for the evidences which is not proof of the case or finding of the issues and (iv) that the learned trial Judge has failed to note that while the amount ordered to be decreed is more than Rs.67,000/=, the

Court fee paid was only Rs.27,500/=, which is not correct. On such grounds, the appellant would pray to allow the appeal setting aside the judgment and decree of the Court below.

7. During arguments, the learned counsel for both would only reproduce the same old facts pleaded before the lower Court and the manner in which the decree came to be passed by the lower Court and therefore no elaborate discussion need be held on such factual position of the case which has already been extracted by tis Court.

8. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that aggrieved by the judgment and decree passed by the Court of trial, the Court of Subordinate Judge, Kancheepuram, rendered in O.S.No.33 of 1986 dated 20.3.1992, the defendant has come forward to prefer the above appeal suit on grounds such as that the trial Court failed to note that there was no compromise and that since the appellant is illiterate and on exercise of fraud, undue influence and coercion, certain irrelevant evidences have been taken by the trial Court which ought to have been ignored; that the trial Judge ought to have dealt with the matter on merit without giving

any importance for the evidence which is not the proof of the case or finding of the issues and consequently ought to have dismissed the suit; that the amount ordered to be decreed is more than Rs.67,00 0/= whereas the Court fee was collected for Rs.27,500/=, which is not correct.

9. The suit is for specific performance of the contract dated 5.2.1 983 praying to pass a decree directing the appellant/defendant to do the registration in favour of the respondent/plaintiff on receipt of the balance sale consideration of Rs.7,500/= on averments that the total sum of sale consideration was Rs.27,500/= and on 5.2.1983, the date of agreement itself, a sum of Rs.20,000/= had been paid as advance.

10. The defendant, though has come forward to adduce a different story than what has been averred in the plaint, still, he would admit that it was true that he approached the plaintiff but for a loan of Rs.20,000/= and in order to avoid the stamp duty and registration expenses, as suggested by the plaintiff, the defendant agreed to execute and register the agreement of sale fixing the time of execution as 5.2.1987 that is to say that the defendant should return the principal amount with interest at 24% p.a. and on the same day, the plaintiff has executed an `ethiridai cheettu' in the form of an agreement.

11. Be that as it may. Now the point for consideration is ` whether there had been a compromise in between the plaintiff and the defendant so as to pass a decree of this sort based on such terms and conditions as agreed by parties and is it right on the part of the lower Court to have passed the decree?'

12. It comes to be seen that the trial Court has recorded and passed a compromise decree based on the deposition of the defendant as D. W.1 dated 31.3.1992. A perusal of the evidence adduced in the open Court by the defendant as D.W.1 is very clear to the effect that he agreed to pay the sum of Rs.67,000/= in two installments to the plaintiff, the first installment of Rs.35,000/=on 12.5.1992 and the second installment of Rs.32,000/= on 12.7.1992 further agreeing to dismiss the suit in the event of his paying the two installments; that he has no objection in the plaintiff withdrawing the sum of Rs.7,500/= deposited by him in the Court and that if he fails to pay the installment amounts, he will receive the sum of Rs.7,500/= from the plaintiff and will execute the sale deed in his favour.

13. Absolutely, no flaw or ambiguity has crept into the evidence of the appellant/defendant recorded by the trial Court and it is not the case of the appellant/defendant also that he did not adduce such evidence at all. However, he would take up the plea that he was made to adduce such evidence by undue influence, coercion and threat without any material to substantiate the said grounds taken to prefer the above appeal.

14. Mere allegations brought forth as the grounds cannot

take the place of the evidence adduced before the Court of law. The sanctity of such evidence is more since the same is the procedures established by law. In these circumstances, when the party himself ascends to the evidence box and deposes to the effect of a compromise reached between himself and the opposite party, no better record or evidence need be necessary for ascertaining the same and to pass a decree in accordance with the terms and conditions agreed upon. Therefore, the lower Court, having passed a decree in adherence to the deposition of the defendant therein has only done its duty and there is no question of testifying the validity of such a decree passed in terms of the compromise entered into between parties and in fact the above appeal is one which would not at all lie before the appellate forum for any consideration much less on grounds as brought forth in the grounds of appeal.

15. So far as the question of court fee raised is concerned,the Court fee had been collected based on the plaint averments properly valued in the suit and not based on the compromise entered into by parties regarding the amount during the pendency of the suit by way of interest. Therefore under this score also, the appeal cannot succeed. The judgment and decree passed by the lower Court is perfectly right and it could only be confirmed thus answering the point framed above against the appellant.

In result,
(i)the above appeal suit fails and the same is dismissed.

(ii)The judgment and decree dated 20.3.1992 rendered in O.S.No.33 of 1986 by the Court of Subordinate Judge, Kancheepuram is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes/No
Rao
15.2.2002.

Sd./

ASSISTANT REGISTRAR

// TRUE COPY//

SUB ASSISTANT REGISTRAR

To
The Subordinate Judge,
Kancheepuram.

Rao

V.KANAGARAJ, J.
Judgment in A.S.565 of 1994.

15.2.2002.